IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

R.S.A. No. 282 of 1992 (O&M)
Date of Decision : 31.3.2010

Bansi Dhar & others

..... Appellants

Versus

Sh. Navnit Lal & others

..... Respondents

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr. Vinod S. Bhardwaj, Advocate
for the appellants.

Mr.C.B. Goel, Advocate
for the respondents.

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VINOD K. SHARMA, J. (ORAL)

C.M. No. 4395-C of 2009

For the reasons stated in the application, the order dated 5.3.2009 is recalled and the case is restored to its original number.

C.M. stands disposed of.

R.S.A. No. 282 of 1992

The plaintiff / appellants by way of this regular second appeal have challenged the judgment and decree passed by the learned Courts below, dismissing the suit filed by the plaintiff / appellants for declaration and possession.

The plaintiff / appellants by claiming themselves to be the collaterals of Uttam Chand deceased sought declaration of ownership along

with a consequential relief of possession by pleading therein, that deceased Uttam Chand had executed a Will on 6.3.1966 bequeathing his property in favour of the plaintiff / appellants. On the basis of the Will plaintiff / appellants sought declaration to the effect that they are owners in possession of the properties in dispute.

On notice, suit was contested by the defendant / respondents, wherein it was pleaded, that prior to filing of the suit plaintiff / appellants had sought succession certificate on the basis of Will dated 6.3.1966. The application for grant of succession certificate was dismissed by holding, that the Will was not a genuine document. The appeal as well as the revision were dismissed in this court.

As the proceedings in succession certificate are of summary nature, the plaintiff / appellants took a chance by filing the present suit by claiming ownership and possession, on the basis of the said Will.

It was pleaded case of the defendant / respondents, that no Will was executed by deceased Uttam Chand, therefore, the properties left by him were to be inherited by way of natural succession, by all the legal heirs.

The learned Courts below on appreciation of evidence have recorded a concurrent finding of fact, that the plaintiff / appellants have failed to prove the Will, as the Will was surrounded by suspicious circumstances.

The reasons for rejecting the Will dated 6.3.1966, recorded by the learned Courts below, are that Sh. Uttam Chand, the executant of the Will, died on the next day i.e. 7.3.1966 after the execution of the Will. It is also proved on record, that prior to death Sh. Uttam Chand was unconscious

for two days. The other suspicious circumstance noticed was, that only one of the attesting witnesses was examined. In order to prove the signatures of the witness on the Will by the plaintiff / appellants examined PW-5 Asa Nand, who was son-in-law of Fatu Ram, attesting witness. However, the Will discloses that although the attesting witness was said to be Fatu Ram but the signatures on the Will was that of Patu Ram. The witness could not explain this discrepancy while appearing in the witness box.

The learned Courts below also doubted the genuineness of the Will for the reason that in the Will no reasons were given to disinherit other legal heirs, especially when the reason for execution of the Will in favour of the plaintiff / appellants also could not be proved as the reason given that the Will was executed out of love and affection for the services rendered. This fact was proved to be wrong as the deceased was living at Jhajjar, whereas the plaintiff / appellants were residents of Delhi. In view of the evidence led and the reasons stated herein above, the learned Courts below have recorded concurrent finding of fact, that the Will was not proved and consequently dismissed the suit.

The learned counsel for the appellants contends that this appeal raises the following substantial questions of law :-

1. Whether the judgments and decrees passed by the learned Courts below are outcome of misreading of evidence on record, is perverse?
2. Whether the Will, which was duly proved could not be ignored on the basis of suspicious circumstances, which were duly explained?

In support of the substantial questions of law the learned counsel for the appellants vehemently contended, that the learned Courts below committed an error in rejecting the Will even though the requirement was only to examine only one attesting witness, who was examined and proved the due execution of the Will.

It was also the contention of the learned counsel for the appellants, that no importance can be given to the findings recorded in the proceedings of issuance of succession certificate, as the proceedings therein being summary in nature, cannot be binding on the Civil Court. The Civil Court was required to adjudicate the validity of the Will by independent evidence.

The learned counsel for the appellants further contended that merely because the executant of the Will died on the next day of the execution of the Will, was not a suspicious circumstance, to disregard the Will.

The learned counsel for the appellants also contends, that in absence of any evidence to the contrary, statement of Asa Nand PW-5 could not be disbelieved as he was the son-in-law of the executant of the Will, as the witness supported the due execution of the Will and it was categorically stated by him that Fattu put his signatures after it was signed by the executant.

On consideration, I find no force in the contentions raised by the learned counsel for the appellants. The suspicious circumstances pointed out by the learned Courts below, were not explained.

Though the finding recorded in the proceeding under the

Succession Act cannot operate as res judicata, but at the same time finding cannot be ignored. The plaintiff / appellants had a chance to prove the Will but they only examined relation of one of the attesting witness, which was disbelieved by the Court. The Will was surrounded by the suspicious circumstance, as mentioned above. This coupled with the fact, that no reasons were given in the Will, as to why he wanted to disinherit the legal heirs in preference to the plaintiff / appellants, especially when reason for disinheriting them was proved to be wrong. At the time of execution of the Will the executant, was resident of Jhajjar while the plaintiff / appellants were resident of Delhi, therefore, it could not be believed that they were serving the deceased, for which a Will could have been executed in favour of the plaintiff / appellants.

Not only this, the evidence was led to prove, that executant was unconscious two days before his death, therefore, it could not be believed, that the Will was executed on 6.3.1966, as claimed by the plaintiff / appellants.

The substantial questions of law, are answered against the plaintiff / appellants, by holding that the judgments and decrees passed by the learned Courts below is not outcome of misreading of evidence, nor it can be said that the suspicious circumstances surrounding the Will were explained, by the propounder of the Will, as contended.

Finding no merit, this appeal is dismissed, but with no order as to costs.

31.3.2010 **(VINOD K. SHARMA)**
'sp' **JUDGE**